

USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>7-7-10</u>
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DATE: July 6, 2010

RE: Caruso, et al. v. Cipriani 42nd Street, LLC, et al.
Index No. 09 Civ. 4405 (JGK)(RLE)

COMPANY NAME: Honorable John. G. KoeltlPLEASE DELIVER IMMEDIATELY TO: Honorable John. G. KoeltlRECEIVER'S FACSIMILE NUMBER IS: (212) 805-7912FACSIMILE SENDER: Joseph A. FitapelliTOTAL NUMBER OF PAGES (INCLUDING THIS PAGE): 5

Please note the number of pages which have been sent to you. If you do not receive the correct number of pages, please contact us immediately.

Dear Honorable Sir,

Pursuant to your instructions at the recent conference, we submit a revised notice of pendency for the Court's approval. Additions requested by the Court have been highlighted for your convenience and have been agreed upon by the parties.

Thank you for your time and consideration.

Very Truly Yours,

/s/ Joseph Fitapelli

cc: Michael Webber, Esq
Michael Fallace, Esq.

The attached notice is approved and can be distributed.
SO ordered
7/6/10. *[Signature]*
U.S.D.S.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
AURELIO CARUSO and EDUARDO YNAMI, individually: 09 Civ. 4405 (JGK)
and on behalf of all those similarly situated,

Plaintiff,

: NOTICE OF PENDENCY OF
: FLSA LAWSUIT

- against -

:
CIPRIANI 42nd STREET, LLC, CIPRIANI USA, INC.,
CIPRIANI FIFTH AVENUE, LLC, GC BALLROOM:
OPERATOR, LLC, 42nd STREET LESSEE, LLC, and
GIUSEPPE CIPRIANI,

Defendants.

----- X
**TO: ALL PRESENT AND FORMER CIPRIANI PASTRY SOUS CHEFS, WHO WORKED IN
THE PASTRY DEPARTMENT AT CIPRIANI WALL STREET, CIPRIANI 42nd STREET OR
THE RAINBOW ROOM FROM [enter date three years prior to date notice is sent] TO
PRESENT.**

RE: FAIR LABOR STANDARDS ACT LAWSUIT

DATE:

INTRODUCTION

The purpose of this notice is to inform you of a collective action lawsuit that you may be eligible to join because you might be "similarly situated" to the named Plaintiffs in this action, Aurelio Caruso and Eduardo Ynami, to advise you of how your rights may be affected by this lawsuit, and to instruct you on the procedure for participating in this lawsuit, should you choose to do so.

DESCRIPTION OF THE LAWSUIT

On May 7, 2009, the above-named Plaintiffs brought this lawsuit against Defendants on behalf of themselves and other similarly-situated individuals who worked as Cipriani Pastry Sous Chefs. Specifically, this lawsuit alleges that these individuals are owed overtime pay under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §201, *et seq.*, for work they performed in excess of forty (40) hours per work week. Defendants deny Plaintiffs' allegations and maintain that Plaintiffs and the potentially similarly situated group are exempt from the overtime provisions of the FLSA, and were properly paid for all hours worked in accordance with the law.

PERSONS ELIGIBLE TO RECEIVE THIS NOTICE

Pursuant to a stipulation of the parties, this notice is being distributed to: All persons who work or have worked as Cipriani Pastry Sous Chefs in the Pastry Department at Cipriani Wall Street, Cipriani 42nd Street or the Rainbow Room at any time from [enter date three years prior to date notice is sent] to the present, and who worked over forty (40) hours a week during that time period without being paid overtime compensation.

YOUR RIGHT TO PARTICIPATE IN THIS LAWSUIT

If you fit the definition above, you may choose to join this action by mailing or faxing the attached "Plaintiff Consent Form" to Plaintiffs' counsel at the following address:

FITAPELLI & SCHAFFER, LLP

Joseph A. Fitapelli, Esq.

Brian Schaffer, Esq.

1250 Broadway, Suite 3701

New York, New York 10001

Telephone: (212) 300-0375

Facsimile: (212) 564-5468

Email: jfitapelli@fslawfirm.com

The "Plaintiff Consent Form" must be received in sufficient time for Plaintiffs' counsel to file it with the Court on or before [DATE 90 DAYS FROM DATE OF MAILING]. If you file a Plaintiff Consent Form, your continued right to participate in this lawsuit may depend upon a later decision by the Court that you and the above-named Plaintiffs are actually "similarly situated" in accordance with applicable laws, and that it is appropriate for this case to proceed as a collective action lawsuit.

EFFECT OF JOINING THIS LAWSUIT

If you choose to join this lawsuit, you will be bound by any ruling, judgment or settlement, whether favorable or unfavorable. While the lawsuit is proceeding, you may be required to provide information, sit for depositions, and testify in court. If you sign and return the Plaintiff Consent Form, you are agreeing to designate the named Plaintiffs and their counsel as your agents to make decisions on your behalf concerning the litigation and method and manner of conducting this litigation, the entering of an agreement with Plaintiff's counsel concerning attorney's fees and costs, and all other matters pertaining to this lawsuit. These decisions and agreements made and entered into by the named Plaintiffs will be binding on you if you join this lawsuit.

EFFECT OF NOT JOINING THIS LAWSUIT

If you choose not to join this lawsuit, you will not be affected by any ruling, judgment, or settlement entered in this case, favorable or unfavorable.

NO RETALIATION PERMITTED

The law prohibits retaliation against employees for exercising their rights under the FLSA. Therefore, Defendants are prohibited from discharging you or retaliating against you in any other manner because you choose to participate in this lawsuit.

YOUR LEGAL REPRESENTATION IF YOU JOIN

If you choose to participate in this lawsuit by filing the attached Plaintiff Consent Form, your interests will be represented by Plaintiffs' Counsel:

FITAPELLI & SCHAFFER, LLP

Joseph A. Fitapelli, Esq.

Brian Schaffer, Esq.

1250 Broadway, Suite 3701

New York, New York 10001

Telephone: (212) 300-0375

Facsimile: (212) 564-5468

Email: jfitapelli@fslawfirm.com

and

MICHAEL FAILLACE & ASSOCIATES, P.C.

Michael A. Faillace, Esq.

110 East 59th Street, 32nd Floor

New York, New York 10022

Telephone: (212) 317-1200

michael@faillacelaw.com

www.employmentcompliance.com

Plaintiffs' counsel has taken this case on a contingency fee basis, meaning if there is no recovery, you do not pay any legal fees. If there is a recovery, the attorneys' fees and costs will be determined on a percentage basis based on the recovery on behalf of the plaintiffs. The percentage provided to Plaintiffs' Counsel could be as much as 33 1/3 % of any settlement or judgment.

For further information about this Notice or the lawsuit, contact Joseph A. Fitapelli, Esq. of Fitapelli & Schaffer, LLP at the number listed above.

If you consent to participate in this lawsuit, you have the right to hire your own attorney, at your own expense. You also have the right to retain your own counsel if you wish to independently pursue your claims against the Defendants.

FURTHER INFORMATION

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY DISTRICT JUDGE JOHN G. KOELTL OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, PURSUANT TO A STIPULATION BETWEEN PLAINTIFFS AND DEFENDANTS. THE COURT HAS NOT YET RULED ON WHETHER PLAINTIFFS' CLAIMS OR DEFENDANTS' DEFENSES HAVE ANY MERIT. IF YOU HAVE ANY QUESTIONS, PLEASE DO NOT CALL THE COURT. ALL QUESTIONS SHOULD BE DIRECTED TO FITAPELLI & SCHAFFER, LLP AT (212) 300-0375.

PLAINTIFF CONSENT FORM

I hereby consent to join the action *Aurelio Caruso, et al. v. Cipriani 42nd Street, LLC, et al.*, U.S. District Court, Southern District of New York, Case No. 09 Civ 4405 (JGK), as a Plaintiff to assert claims for overtime pay under the Fair Labor Standards Act.

Signature

Date

Best Telephone Numbers

E-Mail Address

Last Four Digits of Social Security Number

Emergency Contact (and phone number)**Fax, Mail or Email to:****FITAPELLI & SCHAFFER, LLP****Joseph A. Fitapelli, Esq.****Brian Schaffer, Esq.****1250 Broadway, Suite 3701****New York, New York 10001****Telephone: (212) 300-0375****Facsimile: (212) 564-5468****Email: jfitapelli@fslawfirm.com**